

APPEAL NO. 172734
FILED DECEMBER 27, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 18, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to aggravation of right hip degenerative arthritis and lumbar sprain/strain; (2) the appellant (claimant) reached maximum medical improvement (MMI) on October 5, 2016; and (3) the claimant's impairment rating (IR) is 10%. The claimant appealed, disputing the ALJ's determinations of extent of injury and IR. The claimant contends that the evidence established the compensable injury extends to the disputed conditions and he disagrees with the IR. The respondent (carrier) responded, urging affirmance of the disputed extent of injury and IR determinations.

The ALJ's determination that the claimant reached MMI on October 5, 2016, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that consisted of a right leg cellulitis, right leg abscess, right leg pseudo aneurysm, and AV fistula of posterior tibial artery; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. Y) as the designated doctor for the issues of MMI and IR; and the date of statutory MMI is October 5, 2016. The claimant testified that he was injured when a piece of metal became lodged in his right leg.

EXTENT OF INJURY

The ALJ's determination that the compensable injury of (date of injury), does not extend to aggravation of right hip degenerative arthritis and lumbar sprain/strain is supported by sufficient evidence and is affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the

designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides, in pertinent part, that the assignment of an IR shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

Dr. Y, the designated doctor, examined the claimant for purposes of MMI and IR on July 29, 2015, February 19, 2016, and June 8, 2016. In all three certifications Dr. Y certified that the claimant has not reached MMI. The parties stipulated that the date of statutory MMI is October 5, 2016. As previously noted, the ALJ's determination that the claimant reached MMI on October 5, 2016, was not appealed and became final pursuant to Section 410.169. Accordingly, none of the certifications from Dr. Y can be adopted.

The ALJ determined that the preponderance of the medical evidence supports the report of (Dr. K), a referral doctor from the treating doctor, that the claimant reached MMI on October 5, 2016, with a 10% IR. Dr. K examined the claimant on September 28, 2017, and certified that the claimant reached MMI on October 5, 2016, and assigned a 10% IR using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). Dr. K considered and rated a right leg puncture wound with metallic foreign body, intravascular right tibial peroneal vein, right leg pseudo aneurysm and AV fistula of posterior tibial artery; right hip strain, right knee sprain, right ankle sprain, and lumbar spine strain. Dr. K assessed 4% impairment for range of motion (ROM) of the right knee, 2% for ROM of the right hip and 4% ROM of the right ankle. Dr. K assessed 0% impairment for the lumbar spine. As previously noted the parties stipulated that the carrier has accepted as compensable right leg cellulitis, right leg abscess, right leg pseudo aneurysm and AV fistula of posterior tibial artery. Dr. K considered and rated conditions that have not been determined to be part of the compensable injury and failed to rate conditions that are part of the compensable injury. Therefore, his assignment of the claimant's IR cannot be adopted. Accordingly, we reverse the ALJ's determination that the claimant's IR is 10%.

There is one other certification of MMI/IR in evidence. On October 6, 2016, (Dr. KM), a referral doctor from the treating doctor, examined the claimant and certified that the claimant reached MMI on October 5, 2016, with an 8% IR. Dr. KM considered and rated a right leg puncture wound with metallic foreign body, intravascular right tibial peroneal vein, right leg pseudo aneurysm and AV fistula of posterior tibial artery; right leg allodynia, right leg chronic pain syndrome, right hip strain, right knee sprain, right ankle sprain, and lumbar spine sprain. Dr. KM assessed 4% impairment for ROM for

the right knee and 4% ROM for the right ankle. Dr. KM assessed 0% impairment for the right hip and 0% impairment for the lumbar spine. As previously noted the parties stipulated that the carrier has accepted as compensable right leg cellulitis, right leg abscess, right leg pseudo aneurysm, and AV fistula of posterior tibial artery. Dr. KM considered and rated conditions that have not been determined to be part of the compensable injury and failed to rate conditions that are part of the compensable injury. Accordingly, his assignment of the claimant's IR cannot be adopted.

Because there is no certification in evidence that can be adopted we remand the issue of IR to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to aggravation of right hip degenerative arthritis and lumbar sprain/strain.

We reverse the ALJ's determination that the claimant's IR is 10% and remand the IR issue to the ALJ.

REMAND INSTRUCTIONS

Dr. Y is the designated doctor in this case. On remand the ALJ is to determine whether Dr. Y is still qualified and available to be the designated doctor. If Dr. Y is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's IR for the (date of injury), compensable injury.

The ALJ is to advise the designated doctor that the compensable injury of (date of injury), extends to right leg cellulitis, right leg abscess, right leg pseudo aneurysm and AV fistula of posterior tibial artery. The ALJ is also to advise the designated doctor that the (date of injury), compensable injury does not extend to aggravation of right hip degenerative arthritis and lumbar sprain/strain. The ALJ is to request the designated doctor to rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination as of the MMI date of October 5, 2016.

The parties are to be provided with the designated doctor's new IR certification and are to be allowed an opportunity to respond. The ALJ is then to make a determination on the claimant's IR for the (date of injury), compensable injury.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision

and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
d/b/a CSC-LAWYERS INCORPORATING SERVICE CO.
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge